IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

IN RE: MARVIN B. SMITH III SHARON H. SMITH Debtors	CHAPTER 7 CASE NUMBER 07-20244
MARVIN B. SMITH III SHARON H. SMITH Debtors/Movants vs. BAC HOME LOANS SERVICING LP f/k/a COUNTRYWIDE HOME LOAN SERVICING LP, AS SERVICING AGENT FOR THE BENEFIT OF THE BCAP 2006-AA TRUST Creditor/Respondent	
BAC HOME LOANS SERVICING LP, f/k/a COUNTRYWIDE HOME LOAN SERVICING LP, AS SERVICING AGENT FOR THE BENEFIT OF THE BCAP 2006-AA TRUST Creditor/Movant vs. MARVIN B. SMITH III SHARON H. SMITH Debtors/Respondents	

OPINION AND ORDER DISMISSING MOTION TO RECONSIDER WITH PREJUDICE AND GRANTING MOTION FOR SANCTIONS

This matter is before me on the Motion to Reconsider (ECF No. 377)[1] by pro se Debtors Marvin B. Smith III and Sharon H. Smith, with opposition by Creditor BAC Home Loans Servicing LP, f/k/a Countrywide Home Loan Servicing LP, as servicing agent for the benefit of the BCAP 2006-AA Trust ("BAC"); and on the related Motion for Sanctions (ECF No. 527) by BAC, with opposition by the Smiths. The Smiths seek reconsideration of my Order Denying Motion to Vacate Consent Order ("Order Denying Motion to Vacate") (ECF No. 206), which was entered three years ago and appealed by the Smiths to the United States District Court for the Southern District of Georgia and then to the Eleventh Circuit Court of Appeals, which dismissed the appeal as frivolous. The Smiths also seek disallowance of proofs of claim filed by Countrywide Home Loans Inc. ("Countrywide") in this bankruptcy case.

The dismissal in the Eleventh Circuit having constituted a ruling on the merits of the appeal, the Order Denying Motion to Vacate is now a final order not subject to further appeal. As a final, unappealable order, the Order Denying Motion to Vacate forecloses further litigation of all issues that were raised or could have been raised in the Motion to Vacate. The Motion to Reconsider is therefore dismissed on the ground of

[1] Unless otherwise noted, all docket citations refer to the docket in this bankruptcy case.

res judicata. The Motion for Sanctions is granted to deter future abusive filings.

FINDINGS OF FACT

On April 2, 2007—more than five years ago—the Smiths through counsel filed this bankruptcy case under chapter 11 of the Bankruptcy Code. Countrywide filed two proofs of claim in the case, describing both claims as secured by real property the Smiths now identify as their home at 311 10th Street, Unit #B, St. Simons Island, Georgia.[2] Approximately one year after the filing of the petition, the case was converted to a case under chapter 7.

On September 25, 2008, Countrywide filed a motion for relief from the automatic stay as to the subject real property, bringing the motion in its own name including its successors and assigns. (Dkt. No. 154.) On November 12, 2008, a **CONSENT ORDER** was entered in which the Smiths through counsel agreed to a modification of the automatic stay ("Consent Order") as to the property. (ECF No. 174.) Under the terms of the Consent Order,

[2] At the time the case was filed, the Smiths lived at Cottage 526, Sea Island, Georgia. (ECF No. 1.) The Sea Island property has similarly been the focus of litigation by the Smiths against another secured creditor, Atlantic Southern Bank. The history of that litigation, through three adversary proceedings and ensuing frivolous appeals over the course of more than two years, is recounted in detail in the order of dismissal with prejudice, Smith v. Atlantic Southern Bank, A.P. No. 09-02033, ECF No. 50 (Bankr. S.D. Ga. Jan. 31, 2011), aff'd, No. 2:11-cv-00057, ECF No. 31 (S.D. Ga. May 3, 2012). The Smiths' further appeal is currently pending. See Smith v. Atlantic Southern Bank, No. 12-12973 (11th Cir. filed June 6, 2012).

the chapter 7 Trustee would market the property for six months (180 days). If the Trustee could not find a buyer during that time, the automatic stay would be lifted without further hearing, and Countrywide could proceed with its remedies under state law. It is this Consent Order that the Smiths have spent the past three years attempting to undo.

I. The Litigation: 2009 - 2012.

On April 15, 2009, five months after they agreed to the Consent Order, the Smiths, now proceeding pro se, filed a motion to vacate the Consent Order ("Motion to Vacate") (ECF No. 192) under Rule 60(b) of the Federal Rules of Civil Procedure, made applicable in bankruptcy by Rule 9024 of the Federal Rules of Bankruptcy Procedure. The Smiths' argument, then as now, was that Countrywide misrepresented itself as the owner of the Smiths' mortgage and that Countrywide did not have standing to move for relief from the automatic stay. (Id. at 2.)

I denied the Motion to Vacate from the bench at the close of the hearing on May 28, 2009. Eight days later and preceding entry of a written order, the Smiths filed a notice of appeal to the District Court. (ECF No. 207.)

The District Court affirmed the Order Denying Motion to Vacate and also denied the Smiths' request to reconsider Countrywide's claims. Smith v. Countrywide Home Loans Inc., No.

2:09-cv-00140, ECF No. 18 (S.D. Ga. July 30, 2010). The Smiths then filed a notice of appeal from the District Court's order to the Eleventh Circuit and a motion for leave to proceed in forma pauperis, which the District Court denied, deeming the appeal "frivolous and without merit," id. at ECF No. 26. Undeterred, the Smiths sought leave to proceed in forma pauperis by motion filed in the Eleventh Circuit, where leave was also denied because the appeal was frivolous. Smith v. BAC Home Loans Servicing LP, No. 10-13671 (11th Cir. Nov. 24, 2010) (order denying leave to proceed in forma pauperis). On December 7, 2010, the Smiths moved for reconsideration of the Eleventh Circuit's order. The next day, the Smiths submitted to the bankruptcy Clerk's office the Motion to Reconsider that is before me now.[3]

The Smiths acknowledged in the Motion to Reconsider that their appeal of the District Court's order of July 30, 2010, was still pending in the Eleventh Circuit. (ECF No. 377 at 3.) Thus began more than a year of the Smiths attacking the Order Denying Motion to Vacate simultaneously in the Eleventh Circuit and in this Court, with Countrywide forced to defend in both forums.

The Eleventh Circuit did in fact deny reconsideration of the Smiths' motion to proceed in forma pauperis, and on

[3] Initially, the bankruptcy Clerk's office forwarded the Motion to Reconsider to the District Court, relying on what turned out to be an error in the case caption. The Smiths filed the Motion to Reconsider with a corrected caption on December 14, 2010.

December 14, 2010, the appeal was dismissed for failure to pay the filing fee. On March 7, 2011, the Smiths paid the filing fee and the appeal was reinstated.

In the interim, between the date of dismissal in the Eleventh Circuit and the date the appeal was reinstated, the parties filed a flurry of pleadings in the bankruptcy case. (See ECF Nos. 385, 387, 398, 409.) The Motion to Reconsider was twice set for hearing (ECF Nos. 388, 420), but then was continued indefinitely by order entered April 8, 2011 (ECF No. 476), pending the Eleventh Circuit's resolution of the issues on appeal.

Among the filings during the interim period was a Motion to Continue Hearing by BAC Home Loans Servicing LP, f/k/a Countrywide Home Loans Servicing LP as Servicing Agent for the Bank of New York Mellon f/k/a the Bank of New York, as Trustee for the Certificateholders of CWHEQ, Inc., Home Equity Loan Asset-Backed Certificates, Series 2006-S9. (ECF No. 396.) A footnote stated that Countrywide Home Loans Inc. had been purchased by Bank of America.

On April 22, 2011, Countrywide filed a Notice of Substitution of Parties ("Motion for Substitution") in the Eleventh Circuit, stating that during the pendency of the litigation, the servicer of the Smiths' loan had changed to BAC Home Loans Servicing LP, f/k/a Countrywide Home Loans Servicing

LP. The Motion for Substitution further stated that the loan itself had been transferred, first to The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWHEQ, Inc., Home Equity Loan Asset-Backed Certificates, Series 2006-09; and subsequently to the BCAP 2006-AA Trust.[4]

The Motion for Substitution was granted over the Smiths' opposition. In the same order and on the court's own motion, the Eleventh Circuit dismissed the appeal "as frivolous and entirely without merit." No. 10-13671 (11th Cir. July 20, 2011). The Smiths moved for reconsideration, arguing that the court had not ruled on the merits of the appeal. Reconsideration was denied. Id. (11th Cir. Oct. 11, 2011).

Believing that the dismissal order of July 20, 2011, had resolved with finality the issues on appeal, BAC on July 29, 2011, filed a motion in the bankruptcy case to dismiss the Motion to Reconsider. (ECF No. 500.) BAC noted in the motion that the Eleventh Circuit had granted the Motion for Substitution, and BAC attached the order to the motion as an exhibit. (Id.) More filings in the bankruptcy case followed: the Smiths' reply in opposition to BAC's motion to dismiss (ECF No. 501) and BAC's supplement to its motion to dismiss (ECF No. 508).

[4] Under Rule 201(b)(2) of the Federal Rules of Evidence, I take judicial notice only of the substance, not the truth, of the Motion for Substitution.

On December 29, 2011, eleven days before the deadline to file a petition for a writ of certiorari to the United States Supreme Court, the Smiths submitted to Justice Clarence Thomas an application to extend time to March 9, 2012. The extension was granted on January 5, 2012. Smith v. Countrywide Home Loans Inc., No. 11A642 (U.S. Jan. 5, 2012) (granting application to extend time). Notwithstanding, litigation in the bankruptcy case continued unabated.

On January 3, 2012, the Smiths filed in the bankruptcy case a response to BAC's supplement to its motion to dismiss ("Response"), asserting for the first time that an exhibit attached to one of the Smiths' earlier filings raised new evidence of fraud upon the court that was not part of the record in the Eleventh Circuit. (ECF No. 512 at 2.) The attachment was a one-page printout dated January 1, 2011, from a website identified on the printout as the MERS Servicer Identification System. The printout showed BAC Home Loans Servicing LP as "servicer" and Barclays Bank PLC as "investor" for a loan the Smiths say is theirs. (ECF No. 387 at 22.)

On February 9, 2012, BAC filed a motion for sanctions against the Smiths under Bankruptcy Rule 9011 ("Motion for Sanctions") (ECF No. 527). BAC asserted that the Smiths' continued litigation in this Court, pressing arguments that the Eleventh Circuit had three times deemed frivolous on appeal,

could only be viewed as harassment. In compliance with the 21-day safe harbor provision under Bankruptcy Rule 9011(c)(1)(A), BAC served the Motion for Sanctions on the Smiths on January 17, 2012.

The Smiths did not withdraw the Motion to Reconsider or any of the other offending filings. The Smiths instead filed a response, asserting that BAC was a fraudulent substitution for Countrywide and therefore lacked standing to bring the Motion for Sanctions; and further, that the Smiths' filings were not frivolous. (ECF No. 534.)

Meanwhile, the extended time for filing a petition for a writ of certiorari continued to run. Four days before the extended deadline and ten days before the Motion to Reconsider and the Motion for Sanctions were set to be heard in this Court, the Smiths moved for my recusal from this matter and from the bankruptcy case. (ECF No. 535.) Accordingly, on March 6, 2012, an order was entered staying all further proceedings pending resolution of the Motion for Recusal. (ECF No. 536.) The order further provided that the hearing set for March 15, 2012, on the Motion to Reconsider and the Motion for Sanctions was vacated and that the Motion for Recusal would be heard on that date instead. Three days before the hearing date, the Smiths withdrew the Motion for Recusal.

By this time, the extended time to petition the Supreme Court had run, and no petition had been filed. No additional delays ensued, and the Motion to Reconsider and the Motion for Sanctions were finally heard on May 17, 2012.

II. The Hearing on the Motion to Reconsider and the Motion for Sanctions.

At the hearing on the Motion to Reconsider, Mrs. Smith asserted the same argument she has asserted at every turn in every court over the past three years: that the Consent Order is void, because Countrywide misrepresented itself as a secured creditor when it did not have a perfected prepetition lien on the real property and thus was not a real party in interest with standing to move for relief from the automatic stay on September 25, 2008.

As purportedly new evidence of fraud upon the court, Mrs. Smith submitted printouts from Internet websites, which were admitted over the objections of BAC. Mrs. Smith first submitted two identical printouts of the MERS-related webpage that was attached to an earlier filing and referenced in the Response, one printout dated January 1, 2011, and the other dated February 9, 2011 (Exs. D6, D7). According to Mrs. Smith, the fact that BAC Home Loans Servicing LP was shown as servicer and Barclays Bank PLC as investor established that Countrywide Home Loans Inc. was

neither the servicer nor the investor for BCAP LLC Trust 2006-AA2, contrary to Countrywide's representations beginning with the proofs of claim filed in 2007. Moreover, the fact that Barclays Bank PLC was shown as investor on both the earlier and the later printout established that BAC misrepresented that the Bank of New York Mellon was the investor in the Motion to Continue Hearing filed on February 7, 2011.

As additional new evidence, Mrs. Smith submitted printouts from two other websites (Exs. D16, D17) to show that the Smiths' loan could not have been transferred from BCAP LLC Trust 2006-AA2 to the CWHEQ Trust during the pendency of the Eleventh Circuit appeal, as the Motion for Substitution represented. Arguing that Countrywide's counsel was complicit in the alleged fraud, Mrs. Smith said, "This attorney had to come up with something, and that's what he came up with, but he mistakenly came up with an impossible pathway." (Hr'g, May 17, 2012.)

Counsel for BAC declined to rebut Mrs. Smith's argument, stating that BAC stood on its briefs in the Motion to Reconsider. Accordingly, I took up the Motion for Sanctions.

In support of the Motion for Sanctions, BAC argued for imposition of only nonmonetary sanctions against the Smiths under 11 U.S.C. § 105(a), notwithstanding that the Motion for Sanctions pleaded under Bankruptcy Rule 9011 for attorney's fees as well.

Specifically, BAC requested an injunction against future filings, as I have imposed in the past.[5] Mrs. Smith argued that BAC had no standing to move for sanctions and that "fraud upon the court and standing are not frivolous matters." (Hr'g, May 17, 2012.)

CONCLUSIONS OF LAW

I. There Is No Fraud on the Court.

A judgment may be set aside for fraud on the court. Fed. R. Civ. P. 60(d)(3).[6] Unlike a motion alleging fraud between the parties under Rule 60(b)(3), a motion to set aside a judgment for fraud on the court is not subject to a specific time limit. Sec. & Exch. Comm'n v. ESM Grp., Inc., 835 F.2d 270, 273 (11th Cir. 1988).

The Eleventh Circuit Court of Appeals defines fraud on the court as involving far more than an injury to a single litigant:

> 'Fraud upon the court' should, we believe, embrace only that species of fraud which does or attempts to defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery

[5] In re Smith, No. 07-20244 (Bankr. S.D. Ga. Mar. 24, 2011) (Order Denying Defendant's Motion for Sanctions and Imposing Sanctions Sua Sponte), aff'd sub nom. Smith v. Atlantic Southern Bank, No. 2:11-cv-00060 (S.D. Ga. Mar. 30, 2012), and recons. den., No. 2:11-cv-00060 (S.D. Ga. May 4, 2012).

[6] The Motion to Reconsider as filed did not plead for relief under Rule 60(d)(3), but rather under 11 U.S.C. § 502(j), governing reconsideration of claims. Liberally construing the Smiths' subsequent filings and based on Mrs. Smith's argument at hearing, I consider the motion under Rule 60(d)(3). See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998) ("Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed.")

> cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct.

Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1551 (11th Cir. 1985) (quoting 7 Moore's Federal Practice ¶ 60.33). To prevail, the movant must show "an unconscionable plan or scheme which is designed to improperly influence the court in its decision." Gupta v. Walt Disney World Co., No. 11-14181, 2012 WL 2892398, at *1 (11th Cir. 2012) (citing Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978). Relief is warranted for only "the most egregious misconduct." Id.

Fraud on the court must be established by clear and convincing evidence. Booker v. Dugger, 825 F.2d 281, 283 (11th Cir. 1987). "[C]onclusory averments of the existence of fraud . . . unaccompanied by a statement of clear and convincing probative facts which support such belief do not serve to raise the issue of the existence of fraud . . . ." Id. at 283-84 (quoting Di Vito v. Fidelity & Deposit Co. of Maryland, 361 F.2d 936, 939 (7th Cir. 1966).

The Smiths presented no evidence of fraud on the court, whether by Countrywide or BAC. The purportedly new evidence does not show any egregious misconduct, any unconscionable plan or scheme to improperly influence this Court, or any attempt to defile this Court. Moreover, Mrs. Smith's allegation at hearing of

misconduct by opposing counsel is conclusory and wholly unsupported by any facts. The Smiths have thus failed to meet the standard of clear and convincing evidence required to prevail under Rule 60(d)(3).

II. Res Judicata Applies.

The Motion to Reconsider is barred by res judicata, which prohibits the litigation of a claim that was brought or could have been brought in an earlier proceeding. Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235, 1238 (11th Cir. 1999). A prior judgment is res judicata as to subsequent litigation when the following four conditions are satisfied:

> First, the prior judgment must be valid in that it was rendered by a court of competent jurisdiction and in accordance with the requirements of due process. Second, the judgment must be final and on the merits. Third, there must be identity of both parties or their privies. Fourth, the later proceeding must involve the same cause of action as involved in the earlier proceeding.

Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.), 898 F.2d 1544, 1550 (11th Cir. 1990) (citations omitted). A "judgment" includes "a decree and any order from which an appeal lies." Fed. R. Civ. P. 54(a). Here, the prior judgment is the Order Denying Motion to Vacate, which satisfies all four conditions for claim preclusion.

A. The Order Denying Motion to Vacate Is Valid.

1. The Order Denying Motion to Vacate Was Rendered by a Court of Competent Jurisdiction.

This Court was vested with the authority to hear and determine the Motion to Vacate. Subject matter jurisdiction of motions filed in bankruptcy cases derives from 28 U.S.C. § 1334, which provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). The district court may refer any or all such cases and proceedings to the bankruptcy judges for the district. 28 U.S.C. § 157(a). A referral order was entered in the United States District Court for the Southern District of Georgia on July 13, 1984.

Bankruptcy judges may hear and determine all bankruptcy cases and "all core proceedings arising under [the Bankruptcy Code], or arising in a case under [the Bankruptcy Code]." 28 U.S.C. § 157(b). Core proceedings include proceedings affecting the liquidation of assets of the bankruptcy estate or the adjustment of the debtor-creditor relationship. 28 U.S.C. § 157(b)(2)(O).

Here, the subject real property was an asset of the bankruptcy estate. The Motion to Vacate sought to delay the liquidation of that asset and to "reset" the relationship between

the Smiths and Countrywide to its status before the Smiths agreed to the Consent Order. Thus the Motion to Vacate was a core proceeding under 28 U.S.C. § 157(b)(2)(O). Accordingly, this Court had subject matter jurisdiction to render the Order Denying Motion to Vacate.

2. The Order Denying Motion to Vacate Was Rendered in Accordance with the Requirements of Due Process.

Due process requires at a minimum "that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). Here, the Motion to Vacate was heard on May 28, 2009. During its pendency, the Smiths in addition filed an amendment to the Motion to Vacate (ECF No. 194), a brief in support (ECF No. 201), and a supplemental brief (ECF No. 203). The Smiths thus were fully heard before entry of the Order Denying Motion to Vacate, thereby satisfying the requirement of due process.

B. The Order Denying Motion to Vacate Is Final and on the Merits.

A judgment on the merits "reaches and determines the real or substantial grounds of action or defense as distinguished from matters of practice, procedure, jurisdiction, or form." Saylor v. Lindsley, 391 F.2d 965, 968 (2d Cir. 1968). A final

judgment is a decision that ends the litigation, adjudicating all rights between the parties. Martin Bros. Toolmakers, Inc. v. Indus. Dev. Bd. (In re Martin Bros. Toolmakers, Inc.), 796 F.2d 1435, 1437 (11th Cir. 1986) (citing Catlin v. United States, 324 U.S. 229, 233 (1945)). When a final judgment on the merits is appealed, the judgment's ultimate preclusive effect is determined by the appellate court's decision. Jaffree v. Wallace, 837 F.2d 1461, 1466 (11th Cir. 1988).

Here, the Order Denying Motion to Vacate was on the merits and final, having reached the grounds of the Motion to Vacate and having adjudicated all related rights between the Smiths and Countrywide. Further, the Order Denying Motion to Vacate was affirmed on appeal to the District Court, and the Smiths' appeal of the District Court order was dismissed by the Eleventh Circuit. The time having run for seeking review by the United States Supreme Court, the finality requirement of preclusion is satisfied.

C. There Is Identity of the Parties.

The parties bound by the Order Denying Motion to Vacate are the Smiths and Countrywide. The parties before me in the Motion to Reconsider are the Smiths and BAC. Under the principle of privity, there is identity between Countrywide and BAC.

"Privity" describes a relationship between a party and a nonparty in which their individual interests are so closely aligned that the nonparty could be "fairly considered to have had his day in court." United States v. Perchitti, 955 F.2d 674, 676 (11th Cir. 1992). Federal courts recognize several circumstances that create privity, including when a nonparty succeeds to a party's interest in property. Sw. Airlines Co. v. Texas Int'l Airlines, Inc., 546 F.2d 84, 95 (5th Cir. 1977).[7]

Here, the Smiths argue that BAC was fraudulently substituted as a successor in interest to Countrywide. The Smiths' argument is without merit. The Motion for Substitution was granted by the Eleventh Circuit and that order is of record in the Motion to Reconsider. Thus there is identity of the parties in the Order Denying Motion to Vacate and the Motion to Reconsider.

D. The Motion to Reconsider Involves the Same Cause of Action.

"[I]f a case arises out of the same nucleus of operative fact, or is based upon the same factual predicate as a former action . . . the two cases are really the same 'claim' or 'cause of action' for purposes of res judicata." Kaiser Aerospace & Elecs. Corp. v. Teledyne Indus., Inc. (In re Piper Aircraft

[7] The Eleventh Circuit has adopted as binding precedent all Fifth Circuit decisions handed down before the close of business on September 30, 1981. Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981).

Corp.), 244 F.3d 1289, 1297 (11th Cir. 2001) (internal quotation marks omitted). The focus is on commonality of facts between the prior and subsequent actions, not on the type of relief requested. Id. at 1295.

The claim adjudicated under the Order Denying Motion to Vacate arose from the following facts: Countrywide Home Loans Inc. filed two proofs of claim in this bankruptcy case, both claims described as secured by the real property at 311 10th Street, Unit #B, St. Simons Island, Georgia. Countrywide Home Loans Inc. filed a motion for relief from stay as to the real property. The Smiths through counsel agreed to a resolution of the motion for relief by a consent order that provided a period of time during which the chapter 7 Trustee would market the property. The consent order also provided that if the Trustee did not produce a contract for sale during that time, the automatic stay would be deemed modified to allow Countrywide Home Loans Inc. to proceed with its state law remedies, including a foreclosure sale.

The Motion to Reconsider is based on these same facts. (See Dkt. # 377 at 1-3.) It is immaterial that the Motion to Reconsider seeks an additional remedy: disallowance of Countrywide's proofs of claim. The Order Denying Motion to Vacate determined that the Smiths waived the right to litigate the proofs of claim when they signed the Consent Order. (See ECF No.

206 at 11 ("The Smiths could have objected to Countrywide's proofs of claim, but they did not.").) Thus the Motion to Reconsider and the claim adjudicated in the Order Denying Motion to Vacate are based upon the same factual predicate and accordingly are the same claim. The fourth and final condition for claim preclusion is therefore satisfied.

III. Sanctions Are Warranted.

BAC having orally withdrawn its request for sanctions under Bankruptcy Rule 9011, I instead consider sanctions under 11 U.S.C. § 105(a) and under the inherent powers of the federal courts. The Smiths' argument that BAC has no standing to move for sanctions is without merit. BAC is a party to this litigation, and parties have standing to move for sanctions. See New York News, Inc. v. Kheel, 972 F.2d 482, 488 (2d Cir. 1992).

Under § 105(a), the bankruptcy court may take any action "necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). Abuse of process includes "maneuvers or schemes which would have the effect of undermining the integrity of the bankruptcy system." Official Comm. of Injury Claimants v. Official Comm. of Unsecured Creditors (In re Eagle-Picher Indus., Inc.), 169 B.R. 135 at 138 n.1 (Bankr. S.D. Ohio 1994).

Here, the Smiths have undermined the integrity of the bankruptcy system in at least two ways, first by methodically and deliberately impeding a secured creditor's rightful action against its collateral and second by diverting the finite resources of the Court. The Smiths' unfounded and unrelenting attacks on the Consent Order over a three-year period indicate a calculated plan to harass, hinder, frustrate, and delay any action by Countrywide, now BAC, against the collateral securing its claims. Further, every filing, no matter how frivolous or redundant, requires the time and attention of court staff. The prolific and baseless filings of the past three years have consumed countless hours of staff time both in the Clerk's office and in chambers. The Smiths' ongoing actions thus constitute an abuse of process, and sanctions are warranted under § 105(a) to prevent further abuse.

In addition to its powers under § 105(a), the bankruptcy court, like every federal court, has the inherent authority to impose sanctions against attorneys and parties. Ginsberg v. Evergreen Security, Ltd. (In re Evergreen Security, Ltd.), 570 F.3d 1257, 1263 (11th Cir. 2009). Imposition of sanctions under the court's inherent powers requires a finding of bad faith. Id. at 1273. Demonstrations of bad faith include hampering the enforcement of a court order and "continually

advancing groundless and patently frivolous litigation." Id. at 1274.

Here, enforcement of the Consent Order has been not just hampered, but completely thwarted by the Smiths' continual and meritless appeals. The most egregious churning in this litigation, however, has been the Smiths' filing of the Motion to Reconsider in the bankruptcy court when they knew the same claim was pending in the Eleventh Circuit. The Smiths have thus demonstrated bad faith that warrants the imposition of sanctions under the Court's inherent powers.

In summary, the Smiths have advanced groundless and patently frivolous litigation over the past three years solely to harass a secured creditor and to prevent the enforcement of an order of this Court. Further, the Smiths give no indication that this behavior will change, absent judicial action.

An individual's constitutional right of access to the courts is "neither unconditional nor absolute." Smith v. United States, 386 F. App'x 853, 857 (11th Cir. 2010) (quoting Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986)). Moreover, courts have "a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others." Id. at 858. The Smiths as pro se litigants are not subject to the financial considerations that deter other litigants from frivolous filings. Similarly, they will not be deterred by the imposition of

monetary sanctions. See Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1295 (11th Cir. 2002) (upholding filing injunction when monetary sanction would not sufficiently deter party who could not pay sanction).

The Smiths will not be foreclosed from all access to this Court, but they will be foreclosed from challenging the Consent Order and any actions of Countrywide or BAC related to the Consent Order or to the collateral. See Traylor v. City of Atlanta, 805 F.2d 1420, 1422 (11th Cir. 1986) (upholding filing injunction to prevent pro se litigant from attempting to relitigate claims that were previously adjudicated). Accordingly, I impose the following sanction under § 105(a) of the Bankruptcy Code and under the inherent sanctioning powers of this Court:

The Smiths are barred from filing any pleadings or motions in this Court wherein they name Countrywide Home Loans Inc., Countrywide Home Loan Servicing LP, or BAC Home Loans Servicing LP. The Smiths are instead directed to submit any such pleading to the Clerk of Court. The Clerk will then submit the pleading to me, and I will determine whether the pleading asserts a meritorious claim or simply reasserts the claim that I dismiss in this Order. If a pleading is appropriate, it will be docketed. If a pleading is inappropriate, it will be docketed as stricken, but will not be publicly viewable.

ORDER

It is therefore ordered that the Motion to Reconsider is **DISMISSED WITH PREJUDICE**; and

FURTHER ORDERED that a sanction requiring pre-filing authorization is imposed on any filing by the Smiths that names Countrywide Home Loans Inc., Countrywide Home Loan Servicing LP, or BAC Home Loans Servicing LP.

JOHN S. DALIS
United States Bankruptcy Judge

Dated at Brunswick, Georgia,
this 17th day of September, 2012.